

FACSIMILE TRANSMITTAL FORM		Application Number	10/659877
		Filing Date	September 11, 2003
		First Named Inventor	Fukushi, Tatsuo
		Art Unit	1713
		Examiner Name	Henry S. Hu
Fax: 571-273-8300	Attorney Docket Number	58079US004	RECEIVED CENTRAL FAX CENTER
Total Number of Pages in This Submission: 3			DEC 27 2005
Date: December 27, 2005		Attorney for Applicant: Brian E. Szymanski	

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Patent
Case No.: 58079US004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: **FUKUSHI, TATSUO**

Application No.: **10/659877** Group Art Unit: **1713**

Filed: **September 11, 2003** Examiner: **HU, HENRY S.**

Title: **FLUOROELASTOMERS WITH IMPROVED PERMEATION RESISTANCE AND
METHOD FOR MAKING THE SAME**

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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December 21, 2005

Date

Signed by: Jamie A. Ebach

Dear Sir:

Reconsideration of the restriction requirement in the present application is hereby requested.

The Applicants submitted in both Paper #7 (Response to Restriction Requirement, filed April 26, 2005) and Paper #10 (Amendment and Response Under 37 CFR § 1.111, filed September 15, 2005), that the Patent Office has mischaracterized the present claims.

Particularly, in Paper #6 (Restriction Requirement, dated April 7, 2005), the Patent Office stated that "Invention I relates to a copolymer only made from perfluorinated ethers, while Invention II is restricted to both vinylidene fluoride with perfluorinated ethers." See ¶3, pages 2-3. The Patent Office further stated that with the "presence of hydrogen atoms in the backbone, vinylidene fluoride-containing polymers are behaving different from perfluoropolymers in view of the structure and properties."

The Applicants note in Paper #7 and more thoroughly discuss in Paper #10, that this is an improper characterization of the claims as grouped by the Patent Office. Particularly, the claims of Group I, which relate to claims 1-16 and 18-20 relate to an amorphous copolymer that "includes interpolymerized units derived from one or more perfluorinated ethers of Formula I or

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Formula II." As the MPEP explains at § 2111.03, discussing Transitional Phrases, the transitional phrase "comprising" is synonymous with "including". Including, therefore, is inclusive and open-ended and does not exclude additional, unrecited elements. Therefore, the amorphous copolymers of Group I are generic to and include those of Group II. That is, the copolymers of Group I (what the Patent Office refers to as "Invention I") are not necessarily perfluorinated, but rather "include" interpolymerized units derived from the perfluoro ethers described therein. The amorphous copolymers of Group I may indeed further comprise units derived from other monomers, including vinylidene fluoride, a hydrogen-containing monomer.

Despite this explanation by the Applicants, the Patent Office stated in Paper # 11 (Final Office Action, dated November 3, 2005) that the restriction requirement is "still found to be proper *with the same reason as discussed earlier.*" (emphasis added)

The Patent Office has not addressed the fact that claim 1 is generic to claim 17. Furthermore, the statement that the restriction requirement is considered proper with the "same reasons as discussed earlier" may imply that the Patent Office continues to examine the claims under the improper construction that limits Group I to polymers containing only perfluorinated ethers.

Accordingly, the Applicants respectfully request reconsideration of the restriction requirement and, whether or not the restriction requirement is still deemed proper, the Applicants also request that the Patent Office provide a clear statement detailing the claim construction that the Patent Office has given to the claims of Group I.

Respectfully submitted,

By:

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December 27, 2005

Date

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